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LOS ANGELES NEWSPAPER GUILD, LOCAL 69, AMERICAN NEWSPAPER GUILD, AFL-CIO, CLC, *et al.*,

Petitioners,

vs.

THE HEARST CORPORATION and Its Division, LOS ANGELES HERALD-EXAMINER and HILLSBORO NEWSPAPER PRINTING COMPANY,

Respondents.

Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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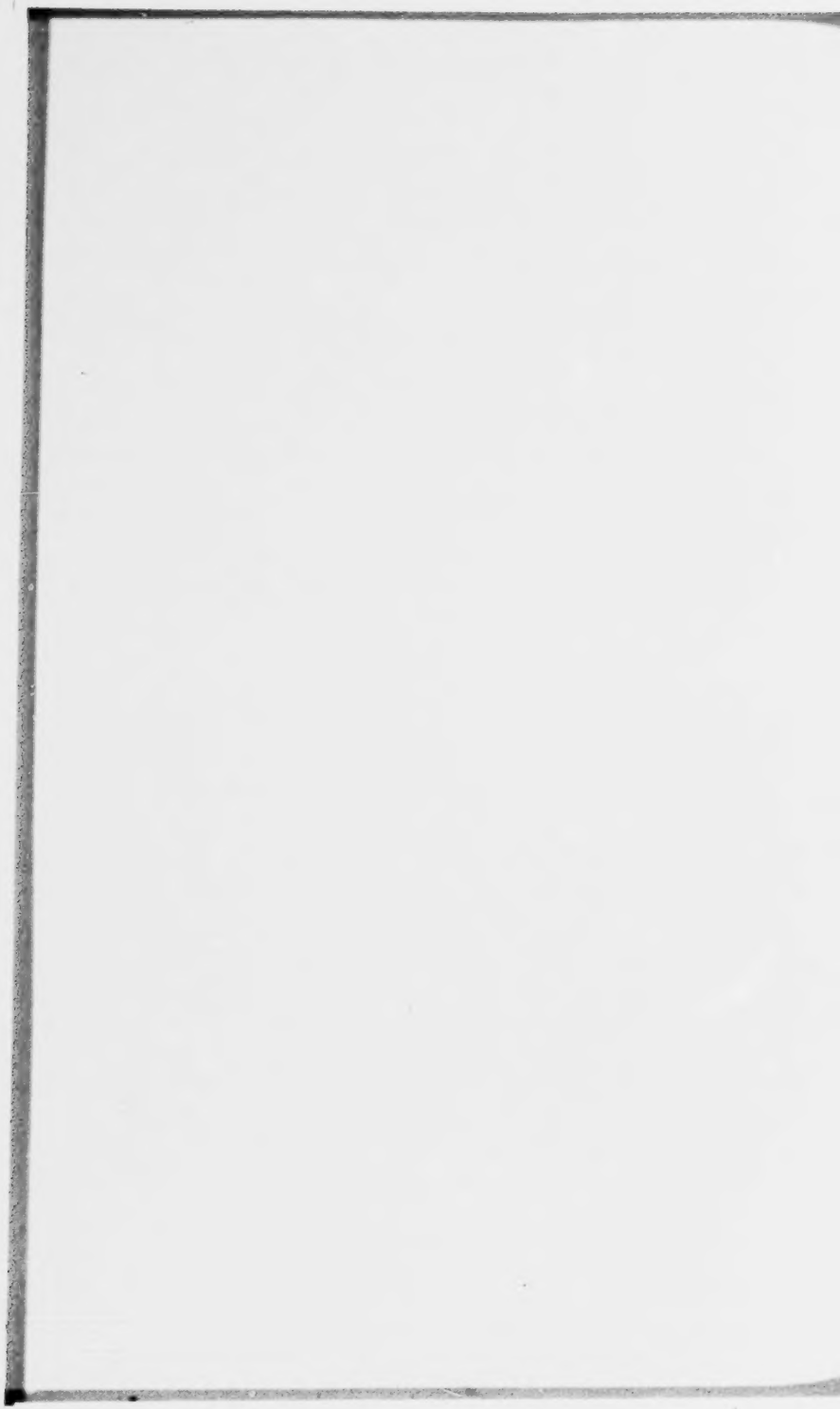

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IN THE

Supreme Court of the United States

October Term, 1974
No. 74-1086

LOS ANGELES NEWSPAPER GUILD, LOCAL 69, AMERICAN NEWSPAPER GUILD, AFL-CIO, CLC, *et al.*,

Petitioner,

vs.

THE HEARST CORPORATION and its Divisions, LOS ANGELES HERALD-EXAMINER and HILLBRO NEWSPAPER PRINTING COMPANY,

Respondents.

Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Respondent The Hearst Corporation hereby opposes the Petition for a Writ of Certiorari filed by Petitioner Los Angeles Newspaper Guild, *et al.*, and respectfully urges that it be denied.

Opinions Below.

The opinion of the Court of Appeals, reported at 504 F.2d 636, 642-643, is set forth in Appendix A to the Petition; the opinion and order of the district court, reported at 352 F.Supp. 1382, is set forth in Appendix B to the Petition.

Questions Presented.

Petitioners, Los Angeles Newspaper Guild, Local 69, American Newspaper Guild, AFL-CIO, CLC; *et al.* (hereinafter referred to as "the Guild"), have presented five questions for review. The Hearst Corporation (hereinafter referred to as "Hearst"), contends that those five questions can be reduced to two questions, which are as follows:

1. Did the particular arbitration provisions contained in the collective bargaining agreement (hereinafter referred to as "the agreement"), provide the exclusive remedy available to the Guild?

2. Does the exclusivity of said arbitral remedy contravene any recognizable public policy?

Counterstatement of the Case.

There exists no substantial dispute as to the material facts here involved. The Complaint in the instant case sought recovery of certain retirement and severance pay benefits provided for in collective bargaining agreements between the parties. However, the collective bargaining agreements between the parties provided for final and binding arbitration of all grievances arising thereunder and allowed the parties to proceed to arbitration by the mutual selection of an arbitrator ("bilateral arbitration") or, if either party failed to cooperate, by the unilateral appointment of an arbitrator ("ex parte arbitration"). The relevant portions of the arbitration provisions are found in Sections 3A, 3B, and 3E of Article VII, which state:

"A. Within five (5) days of the written notice of arbitration hereinbefore prescribed, the parties shall meet to select an arbitrator to whom the grievance of the complaining party shall be submitted for final decision.

"B. If such an arbitrator is not selected, or the party adverse to the complaining party refuses for any reason to proceed to the selection of an arbitrator, or if for any other reason an arbitrator is not selected or secured within the aforesaid five (5) day period, then the complaining party has the right to request the American Arbitration Association to proceed to the appointment of an arbitrator pursuant to the present rules of the voluntary labor arbitration tribunal of the American Arbitration Association, and the grievance shall be submitted to such arbitrator for final decision.

* * *

"E. The award of the arbitrator shall be final and binding."

The district court dismissed the subject complaint on the ground that arbitration was the exclusive remedy of Guild and the Court of Appeals affirmed.

As Guild maintains it has the right to arbitrate the subject dispute, the following facts are without controversy and there appears to be no disagreement that (1) the arbitration provisions referred to in part above remain in force and effect, (2) an award made in the arbitration is final and binding, and (3) the arbitration provisions encompass the subject claims.

Introduction.

This case presents a rather routine question to this Court: Does the presence of arbitration as an exclusive remedy preclude Guild from seeking judicial relief to determine the merits of a claim arising under a collective bargaining agreement? Hearst submits that this question can be easily answered by the observation that countless courts, including the District Court and the Court of Appeals below, have determined that a union, having chosen arbitration as a forum to settle disputes, is bound by that choice. As such, the present Petition for a Writ of Certiorari should be denied on the basis that this case does not offer a question of any public significance, nor does it face this Court with a conflict among the Courts of Appeals which this Court need resolve.

An analysis of the arguments set forth in the Guild's Petition for Certiorari must begin with a statement of the ultimate operative facts here involved. First, the provisions of the contract between the parties so far as it provides for the arbitration of grievances is still in force and effect. The facts and circumstances involved in the subject dispute between the parties give rise to a substantively arbitrable grievance. The arbitration provisions in the contract, whether invoked bilaterally or unilaterally, always result in a decision that is final and binding on the parties. These three facts were found to exist by the courts below and have never been controverted by the Guild. The recitation of these facts, with a concomitant allusion to the familiar *Tril-*

ogy cases,[1] is all that is necessary to command the usual result that arbitration is the exclusive legal recourse available to the petitioners.

Petitioners seek to avoid this typical result by claiming that Hearst has "repudiated" the arbitration provisions of the agreement. Because of this assertion, it is necessary to consider three more ultimate operative facts which are dispositive of the Guild's claim. First, the arbitration provisions here involved specifically empower either party to proceed *ex parte* to final and binding arbitration if it is confronted with an adverse party's refusal to proceed on a bilateral basis to arbitration. Second, the Guild acknowledges that it proceeded to submit the subject dispute to final and binding arbitration by invoking the *ex parte* arbitration provisions set forth in the contract, thereby tacitly recognizing Hearst's inability to frustrate the arbitration provisions. Third, no allegation has been made at any point in the subject proceedings that the Guild, as a representative of present and past employees of Hearst or the successors of such employees, has breached its duty of fair representation. As the Guild has not been charged with breach of its duty of fair representation, the employees may not bring direct action against Hearst to resolve a dispute subject to the arbitration provisions of the agreement.

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[1] *United Steelworkers of America v. American Manufg. Co.*, 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed. 1403 (1960); *United Steelworkers of America v. Warrior and Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1358, 4 L.Ed.2d 1409 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960).

The Ex Parte Arbitration Provided for in the Collective Bargaining Agreement Is and Was the Exclusive Remedy for Guild.

Guild contends that the arbitral process was not the exclusive remedy afforded to it under the agreement because Hearst purportedly repudiated the agreement. For its decisional authority to support its contention, Guild relies upon *Vaca v. Sipes,* 386 U.S 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967) and several federal courts of appeals decisions.

Guild's contentions notwithstanding, Hearst could not have "repudiated" the particular arbitration provisions here involved. Repudiation, as defined in Black's Law Dictionary, (4th Ed. Revised), is "the rejection or refusal of . . . a duty or relation". Repudiation, then, manifests a prospective unwillingness to perform a duty or obligation arising from a contract. While repudiation may be conceptionally elusive, repudiation of an arbitration provision may be viewed as conduct by one party which frustrates or precludes access by the other party to the arbitral forum. Because of the particular provisions here involved, Hearst could not and, in fact, did not prevent Guild from obtaining a resolution of its grievances by arbitration.

The gravamen of Guild's assertions is that Hearst failed to meet with Guild to select an arbitrator under the procedures set forth in Section 3A. Guild proceeds rapidly from this assertion to the conclusion that Hearst thereby repudiated all of the arbitration provisions, neglecting to mention the *ex parte* provisions set forth in Section 3B.

In their agreement, the parties specifically envisioned the possibility that one of them might assert the non-

arbitrability of a particular grievance and, to protect that position, decline to cooperate in the selection of an arbitrator. In order to avoid suits to compel arbitration, the parties wisely provided an accommodation to such a position by permitting the selection of an arbitrator unilaterally without requiring a determination of arbitrability prior to the arbitration itself. This provision is embodied in Section 3B which in pertinent part is worthy of repetition:

> "B. If such an arbitrator is not selected, or the party adverse to the complaining party refuses for any reason to proceed to the selection of an arbitrator . . . then the complaining party has the right to request the American Arbitration Association to proceed to the appointment of an arbitrator . . . and the grievance shall be submitted to such arbitrator for final decision."

It is apparent that Section 3B provides for *ex parte participation* in the selection of an arbitrator who thereupon would make a final and binding decision. Therefore, Hearst could not have, under any circumstances nor in any way imaginable, repudiated the *ex parte* access to arbitration. It is emphasized that Sections 3A and 3B specifically provided that the decision of the arbitrator was to be final. Even more, Section 3E of Article VII of the Agreement provides that the arbitrator's award was to be *final and binding.* Thus, Guild's argument that Hearst would not be bound by the award of the arbitrator selected under Section 3B is specifically contradicted by the language of the Agreement itself. Parenthetically, it is observed that due process considerations are not involved herein since Hearst had prior notice of the actual hearing.

To reiterate, Section 3B permitted Guild to seek and obtain the appointment of an arbitrator despite any verbal or written protestations of Hearst. In fact, Guild did so obtain the appointment of an arbitrator under Section 3B, who rendered a final and binding decision after which this action was commenced by Guild.

The practice of submitting grievances to arbitration has been specifically approved for labor disputes by the Congress of the United States. Labor Management Relations Act of 1947, 61 Stat. 152, Title II, § 201, 29 U.S.C. § 171(C). Later, in the same Act, 61 Stat. 153, Title II, § 203, 29 U.S.C. § 173(d), the Congress stated in relevant part:

> "(d) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."

The Congressional policy enunciated above has found wholehearted support from this court in the *Trilogy* cases[2] and more recently in *Gateway Coal Co. v. Mine Workers,* 414 U.S. 368, 94 S.Ct. 629, 38 L.Ed.2d 583 (1974).

Even more, once the parties have determined that arbitration will be the exclusive forum for resolution of grievances, the parties are bound by their choice. This is reflective of the federal labor policy which requires that contract grievance procedures agreed upon by employers and unions be the exclusive forum for resolution of industrial grievance disputes. Access to state and federal courts to enforce rights arising under a col-

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[2] *Id.*

lective bargaining agreement arises only in exceptional cases. Generally, suits are permitted only to compel arbitration.

One such exception is found in *Vaca v. Sipes, supra,* which Guild cites for a general proposition that Guild was permitted to pursue an elective remedy of enforcing its members' rights in court rather than in the arbitral forum. Guild mistakes this court's holding in *Vaca,* the basic facts which are crucial to understanding that *Vaca* is not applicable in the instant matter.

First, the collective bargaining agreement in *Vaca* called for bilateral arbitration which meant that either the union or the employer could repudiate the arbitration provisions. Such repudiation could occur because either party could deny the other party access to arbitration. As discussed above, no repudiation could occur herein because Guild always had access to arbitration under Section 3B. Second, the union in *Vaca* wrongfully refused to process the employee's grievance to its end result in arbitration which this court found to be a breach of its duty of fair representation. 386 U.S. at page 197. Here, of course, Guild has pursued possible remedies in various arenas: administrative, court and arbitral. The breach of the union's duty of fair representation found by this court in *Vaca* is simply not alleged herein.

Guild also cites several cases for the proposition that it was not restricted to the arbitral forum for a resolution of the dispute herein, but rather had the alternative remedy of court action to determine the substantive merits of the dispute. It is noted that in none of the cases cited by Guild involved a contract provision which provided for *ex parte* access to arbitration, rather

each contract involved only bilateral access to arbitration.

In *Southwestern Electric Power Company v. Local Union 738, IBEW*, 293 F.2d 929 (5th Cir. 1961), the employer refused to submit to arbitration under an agreement requiring bilateral participation in the arbitral process. The court compelled arbitration so that the merits of the dispute could be heard.

In both *International Association of Machinists v. Hayes Corp.*, 296 F.2d 238 (5th Cir. 1961) and in *United Steelworkers of America AFL-CIO v. American Intl. Aluminum Co.*, 334 F.2d 147 (5th Cir. 1964), the employer refused to submit to any of the grievance steps or arbitration. In both cases, although involving different factual circumstances, the court compelled arbitration to determine the merits of the dispute.

In *Teamsters Local Union v. Braswell*, 392 F.2d 1, opinion modified 395 F.2d 655 (5th Cir. 1968), the union sought arbitration and obtained an arbitration award despite a special appearance by the employer denying the substantive arbitrability of the dispute. In the modified opinion, the court held that arbitration was the correct remedy even though the union had not exhausted the preliminary grievance procedures under the agreement.

In the last two cases cited by Guild, *Lane, Ltd. v. Larus & Brother Company*, 243 F.2d 364 (2d Cir. 1957) and *Reiss v. Murchison*, 384 F.2d 727 (9th Cir. 1967), the courts were not faced with an employer-union dispute but rather a commercial contract. In both cases, one party had refused to submit to arbitration questions which the courts held could be arbitrated under the contract. The court did not determine

the merits of the dispute but rather compelled arbitration.

It is clear that the cases cited by Guild are not apposite to the instant matter where Guild always had ex parte access to arbitration.

The United States Congress has also indicated its approval of arbitration in the commercial arena by the enactment of Title 9 of the United States Code which is entitled "Arbitration". Section 2 of the Arbitration Act states that the Act applies to situations involving a written arbitration provision in a contract evidencing a transaction involving commerce. Section 4 of the Arbitration Act permits a party aggrieved by the alleged failure, neglect or refusal of another party to arbitrate under a written agreement to petition any United States District Court for an order directing that such arbitration proceed in the manner provided for in the agreement. Although Title 9 is not specifically applicable to labor disputes (rather being supplied for a need in commercial disputes), the principles arising from an examination of cases thereunder are applicable herein. More specifically, ex parte provisions similar to the ex parte provision considered herein have been upheld in cases decided under the Arbitration Act.

In *Kentucky River Mills v. Jackson*, 206 F.2d 111 (Sixth Cir. 1953), cert. denied 346 U.S. 887, 74 S.Ct. 144, 98 L.Ed. 392, the arbitration agreement provided that if either party failed to appoint an arbitrator within seven days after receipt of the other party's nomination of an arbitrator, the arbitrator already nominated could act as sole arbitrator. Kentucky River Mills, one of the parties, refused to recognize any obligation under the contract of arbitration and further refused to

appoint an arbitrator. The appointed arbitrator conducted an ex parte hearing with notice to the recalcitrant Kentucky River Mills, and his determination against Kentucky River Mills was upheld by the Sixth Circuit Court of Appeals.

The facts herein are even stronger because only one arbitrator was to be chosen by the terms of the agreement, and the arbitrator's decision was to be final and binding, whether evolving from a bilateral or *ex parte* selection of an arbitrator. See *Standard Magnesium Corporation v. Fuchs,* 251 F.2d 455, 458 (Tenth Cir. 1957) (where the court held that in situations where an ex parte clause is involved, no court order was necessary under Section 4 of the Arbitration Act since the party could proceed on its own to arbitration).

In *A/S Ganger Rolf v. Zeeland Transportation Co.,* 191 F.Supp. 359, 363 (S.D.N.Y. 1961) the court stated:

> "Petitioners, while conceding that they have the right under the arbitration clause to proceed ex parte, urge that they have no duty to do so and that therefore they may waive the right and elect to petition the court for relief under the Arbitration Act. The petitioners overlook the object of the Arbitration Act which contemplates only the enforcement of the arbitration agreement made by the parties themselves in the manner they themselves provide. Petitioners, by waiving rights and remedies given to them by the arbitration clause cannot thereby acquire a new right not granted by the Act to have the court compel arbitration in a manner different from that provided by the

clause. *Having designed their own remedy for recalcitrance they cannot, over respondent's objection, ignore that remedy and pursue another.*" (Emphasis added.)

California adheres to the same rule enunciated above. *Brink v. Allegro Builders, Inc.*, 58 Cal.2d 577 (1962); *Smith v. Campbell & Facciolla, Inc.*, 202 Cal.App.2d 134 (1962); *Eckert v. Davis*, 161 Cal.App.2d 638 (1958).

Here, the situation is identical in that the contract provided for *ex parte* access to arbitration despite Hearst's alleged protestations. The conclusion to be drawn, therefore, from the foregoing is that when the parties choose the arbitral forum to settle their disputes, and even more, choose to permit one party to obtain an arbitrator's determination in an *ex parte* manner, the parties are bound by their choice. This is especially true in the labor arena where arbitration is the preferred alternative for resolution of labor disputes, be they large or small.

Guild asserts that California Labor Code § 218[3] always permitted Guild to sue in a judicial forum on behalf of its members to enforce their claims despite the exclusivity of the arbitration provisions set forth above. Guild mistakes the thrust of California Labor Code § 218 which does not preclude an employee or his union from utilizing the grievance arbitration forum

[3]California Labor Code § 218 provides: "Nothing in this article shall limit the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations of this article or to enforce the provisions thereof independently and without specific directions of the division. Nothing in this article shall limit the right of any wage claimant to sue directly or through an assigneee for any wages or penalty due him under this article."

to adjudicate those rights. In fact, the Guild and thereby its members did agree to resolve any compensation disputes in the arbitral forum rather than in a judicial forum. Since the arbitral forum is the preferred forum according to both the Congress and the federal courts, such an election of forums bars the employees in this matter from seeking judicial relief on the merits of their claims.

Guild relies upon *United States Bulk Carriers, Inc. v. Arguelles,* 400 U.S. 351, 91 S.Ct. 409, 27 L.Ed.2d 456 (1971) as authority to bolster the proposition that it was entitled under California Labor Code § 218 to elect between the arbitral and judicial forums to enforce its members' asserted rights. In *Arguelles,* this court permitted a seaman to sue in court for wages under Title 46 U.S.C. §§ 596 and 597, despite the presence of a grievance arbitration procedure established by virtue of a contract between the seaman's Maritime Union and the employer. However, a close and exact reading of *Arguelles* reveals that the court was allowing an exception to the holding in the *Steelworkers Trilogy,* only in view of the fact that seamen had been thusly protected for 180 years. The court then stated:

> "The chronology of the two statutes—§596 and §301—makes clear that the judicial remedy was made explicit in §596 and not clearly taken away by §301. What Congress has plainly granted we hesitate to deny. Since the history of §301 is silent on the abrogation of existing statutory remedies of seamen in the maritime field, we construe it to provide only an optional remedy to them. We would require much more to hold that §301 reflects a philosophy of legal compulsion that overrides the explicit judicial remedy provided by 46 U.S.C. § 596." 400 U.S. 357-358.

The court, in essence, was attempting to reconcile two different federal statutes and found that implicit repeal of §§ 596-597[4] was not intended by the Congress.

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[4]46 U.S.C. § 596 provides:

"TIME FOR PAYMENT. The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4529; Dec. 21, 1898, c.28, §§ 4, 26, 30 Stat. 756, 764; Mar. 4, 1915, c.153, § 3, Stat. 1164."

46 U.S.C. § 597 provides:

"PAYMENT AT PORTS. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: Provided, Such a demand shall not be made before the expiration of, nor oftener than once in five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be

(This footnote is continued on next page)

It is worthwhile noting again that California Labor Code § 218 implicitly permits the employee to select a different forum than a judicial forum to settle his claim while § 596 does not. Even more, § 218 is a state statute while the Labor Management Relations Act is federal legislation. The familiar doctrine of preemption gainsays the contention of the Guild that § 218 is coequal with federal law. To allow a state or states to enact legislation permitting employees to avoid exclusive remedy grievance-arbitration procedures would substantially undercut the congressionally declared national policy favoring such procedures.

The other case relied upon by the Guild can be similarly analyzed. In *Iowa Beef Packers, Inc. v. Thompson,* 185 N.W.2d 738 (Iowa 1971) cert. granted 404 U.S. 820, 92 S.Ct. 79, 30 L.Ed.2d 48 (1971), dismissed as improvidently granted 405 U.S. 228, 92 S.Ct. 859, 31 L.Ed.2d 165 (1972), the Iowa Supreme Court allowed an employee to maintain an action for overtime wages. The action was brought under the detailed and specific Fair Labor Standards Act, 29 U.S.C. § 207(a)(1). The Iowa Supreme Court stated:

> "We believe that if Congressional intent to allow a seaman to arbitrate or sue at his option is

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then due him, as provided in section 596 of this title: Provided further, That notwithstanding any release signed by any seaman under section 644 of this title any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: And provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement. This section shall not apply to fishing or whaling vessels or yachts. R.S. § 4530; Dec. 21, 1898, c.28, §§ 5, 26, 30 Stat. 756, 764; Mar. 4, 1915, c.153, § 4, 38 Stat. 1165; June 5, 1920, c.250, § 31, 41 Stat. 1006."

> manifest in the seaman's act involved in Arguelles, as the court held here, then an intent to give workmen such an option is also manifest in the Fair Labor Standards Act. 185 N.W.2d 738, 742."

Again, the court was attempting to reconcile two federal statutes. It decided that implicit repeal of the Fair Labor Standards Act was not intended by Congress. Such is not the situation in the present case where California Labor Code § 218 is a state statute which must bow to the federal policy favoring arbitration.

Concluding, the *Arguelles* rationale is not applicable here for two reasons: (1) California Labor Code § 218 is preempted by federal law and (2) California Labor Code § 218 implicitly permits an employee to transfer his right to sue in a court of law to the arbitral forum.

Guild urges that Hearst by its repudiation of the agreement was estopped from asserting that Guild's exclusive remedy was arbitration. As discussed amply above, Hearst could not have repudiated the arbitral process since Guild at all times had the contractual right to proceed *ex parte* to arbitration. Therefore, the doctrine of estoppel is inapposite to the facts of this case since Hearst never could have prejudiced Guild's remedy of seeking *ex parte* arbitration.

Concluding, the *ex parte* arbitration provision contained within the agreement was the exclusive remedy available to Guild in this matter.

There Is No Public Policy Which Requires That the Ex Parte Provision in the Agreement Be Declared Invalid.

Guild asserts that the benefits claimed by its members are potentially valuable property rights which as a matter of public policy should be protected. The correctness of this assertion is irrelevant as the instant case does not involve a review of the merits of this dispute. The relevant fact is that Guild, on behalf of its members, agreed to submit all disputes concerning those benefits to the arbitral forum. Guild might well have placed into the agreement the option of either judicial or arbitral remedies to enforce any claims to those benefits but did not, choosing rather the exclusive remedy of arbitration. As the *Trilogy* cases[5] state, such a choice is preferred as a matter of federal labor policy.

Guild states that plaintiffs should always have their claims adjudicated on the merits. What the Guild overlooks, however, is that Statutes of Limitations have existed for centuries on sundry causes of action. In situations where a statute of limitations is invoked, obviously the plaintiff is barred from having his claim heard on the merits.[6] A competing public policy is also operative here, *i.e.*, that it is in the public interest to have claims heard and settled within a reasonable time, especially in the labor arena. That policy is the foundation for enacting statutes of limitation.

Furthermore, a decision allowing the Guild to avoid the time limits explicitly or inherently in a collective

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[5]Cases cited in footnote 1.

[6]While relying on *Vaca v. Sipes, supra,* Guild seems to overlook that the result in the case was that the plaintiff was barred from recovering because he failed to pursue the proper defendant until apparently the statute of limitations had expired.

bargaining agreement would encourage unions and employers to delay initiating grievance procedures so that a court of law could hear the merits of the dispute. Such a result would be directly contrary to the national labor policy of favoring grievance-arbitration procedures for settling such disputes.

Conclusion.

In conclusion, Hearst submits that the present Petition for a Writ of Certiorari be denied on the basis that Guild's exclusive remedy herein was the arbitral forum and not the judicial forum for a determination of the merits of the parties' dispute. Further, there is no recognizable compelling public policy which mandates that this exclusive remedy be vacated so as to permit Guild to avoid its contractual remedy of arbitration.

March 27, 1975.

Respectfully submitted,

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